

**UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
Charlotte Division**

In Re:)	Chapter 11
GARLOCK SEALING TECHNOLOGIES)	Case No. 10-31607
LLC, et al.)	
Garlock. ¹)	Jointly Administered

APPENDIX B

**TO THE POST-HEARING RESPONSE BRIEF OF THE OFFICIAL COMMITTEE OF
ASBESTOS PERSONAL INJURY CLAIMANTS FOR ESTIMATION OF
PENDING AND FUTURE MESOTHELIOMA CLAIMS**

**SUPPLEMENT TO RESERVATION OF OBJECTIONS BY THE OFFICIAL
COMMITTEE OF ASBESTOS PERSONAL INJURY CLAIMANTS TO
(i) EXHIBITS AND DEPOSITION DESIGNATIONS GARLOCK SEEKS TO
INTRODUCE IN EVIDENCE TO SUPPLEMENT THE RECORD OF THE
ESTIMATION HEARING, AND (ii) GARLOCK'S "OFFER OF PROOF"
AS TO ADDITIONAL MATTERS NOT PRESENTED AT THAT HEARING**

The Official Committee of Asbestos Personal Injury Claimants (the "**Committee**") hereby supplements the Reservation of Objections [Dkt. No. 3199] that it filed on November 1, 2013. That November 1 submission is referred to below as the "**Objections**"² and the instant submission as the "**Supplemental Objections**."

INTRODUCTION

The Objections addressed certain exhibits and deposition designations that Debtors represented they would submit in supplementation of the record of the hearing this Court

¹ Debtors in these jointly administered cases are Garlock Sealing Technologies LLC, Garrison Litigation Management Group, Ltd., and The Anchor Packing Company.

² The Objections were submitted as Appendix I to the Post-Hearing Brief of the Official Committee of Asbestos Personal Injury Claimants for Estimation of Pending and Future Mesothelioma Claims.

conducted in the estimation proceeding during July and August 2013 (the “**Estimation Hearing**”). Debtors had disclosed the particulars of their intended supplementation in advance by providing the Committee, on a reciprocal basis, with a series of draft exhibit lists. On November 1, 2013, Debtors’ filed and served their final exhibit list (“**Debtors’ List**”) [Dkt. No. 3208-original filed under seal]. The Committee has since taken the opportunity to review Debtors’ List and finds that, while it conforms generally to the last draft provided, it does include an objectionable addition noted below.

SUPPLEMENTATION OF OBJECTIONS

1. The Debtors’ List includes GST-7330 at page 48 thereof. This document was not referred to in the draft lists provided earlier to the Committee and so was not noted in the Committee’s Objections.

2. GST-7330 is a copy of a motion filed by an asbestos defendant in a Maryland asbestos case, namely, Defendant CertainTeed Corporation’s Motion for Sanctions and Request for Hearing, (*In re Baltimore City Asbestos Litigation*) *Luther Beverage v. ACandS, Inc.*, Consolidated Case No. 24X11000785 (Cir. Ct. Balt. City, Aug. 26, 2013) (Case Affected: Manuel Gonzalez). The motion put forth certain allegations concerning an asbestos plaintiff and his counsel, The Law Offices of Peter G. Angelos, *i.e.*, that in a prior trial and discovery related thereto, the plaintiff had given testimony inconsistent with various submissions made to trusts after the jury returned a defense verdict. That verdict had been overturned on appeal and the defendant filed its motion in an attempt to avoid a retrial.

3. GST-7330 is irrelevant hearsay and the Court should exclude it from the record of the estimation proceeding. The mere allegations of a defendant who is not a party to this proceeding are not statements made under oath in the Estimation Hearing (and, by the same

token, were not subject to cross-examination by the Committee). As such, GST-7330 must be excluded as hearsay if offered for the truth of its contents. Fed. R. Evid. 801 & 802. If offered for any other purpose, that document is irrelevant because it has no tendency to make more or less probable any fact of consequence to the estimation proceeding. Fed. R. Evid. 401.

4. Furthermore, when Garlock submitted Debtors' List on November 1, 2013, it knew or should have known of the unreliability of GST-7330 because (a) on September 23, 2013, the plaintiff in the Baltimore case had filed and served his opposition to the defendant's motion, demonstrating its factual inaccuracy and (b) on October 8, 2013, the defendant had withdrawn the motion and settled the case. Copies of the plaintiff's opposition and an excerpt of the transcript of the hearing at which the defendant withdrew the motion are attached at Exhibits 1 and 2 to this Supplemental Objection, respectively (Exhibit 2 has been redacted to omit settlement details). The Court may properly consider them to determine the inadmissibility of GST-7330, Fed. R. Evid. 104(a), or as materials that should in fairness be considered along with GST-7330, Fed. R. Evid. 106, if the latter is not excluded.

Respectfully submitted,

Dated: November 26, 2013

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EXHIBIT 1

IN RE:	PERSONAL INJURY	*	IN THE
	ASBESTOS LITIGATION	*	CIRCUIT COURT
		*	FOR BALTIMORE CITY

LUTHER BEVERAGE, et al.,		*	CONSOLIDATED NO. 24-X-11-000785
	Plaintiffs	*	OCTOBER 8, 2013
			MESOTHELIOMA TRIAL
	v.	*	CLUSTER (M 134)
ACandS, INC., et al.,		*	
	Defendants	*	

<u>CASE AFFECTED:</u>		*	
MANUEL GONZALEZ		*	CASE NO. 24-X-08-000439

**PLAINTIFFS' OPPOSITION TO MOTION OF DEFENDANT
CERTAINTTEED CORPORATION FOR SANCTIONS**

Plaintiffs, by their attorneys, in opposition to the Motion of Defendant CertainTeed Corporation for Sanctions, respectfully state as follows:

INTRODUCTION

CertainTeed has moved for the extraordinary remedy of dismissal based on accusations that the Plaintiff's Decedent, Manuel Gonzalez, and his counsel have committed a fraud on the Court and Certainteed, and have abused the judicial process. These accusations stem from the submission by Manuel Gonzales of 23 bankruptcy claims after his first trial ended in a defense verdict in 2009. CertainTeed describes this as deception and done in bad faith.

The facts set forth in CertainTeed's motion and the exhibits attached with it demonstrate the exact opposite of what CertainTeed claims. Plaintiffs violated no discovery order. Plaintiffs timely provided all bankruptcy trust claim forms submitted. Plaintiffs set forth truthfully what he

knew about working with or around asbestos in each of the bankruptcy trust claims submitted. The circumstances of Mr. Gonzalez's exposure set forth in the bankruptcy trust claim forms submitted were consistent with the discovery adduced before the first trial and with the evidence submitted in the first trial. CertainTeed was timely provided with copies of all of the bankruptcy trust claim forms and settlement information. There was no fraud committed, no abuse of judicial process, no deception, and no bad faith. Since there was none of these things, there could not be and there has not been any "resulting prejudice" to CertainTeed.

CERTAINTEED'S BASELESS ACCUSATIONS

22 of 23 Mr. Gonzalez's bankruptcy claims submitted beginning in December, 2009 were never paid and never will be paid. They were submitted in the unlikely event that additional evidence would come to light establishing Mr. Gonzalez's presence at a job site where a bankrupt entity's asbestos-containing products were in use. One witness, Maximo Reyes, was later found and will be a product identification witness at the trial of this case. He corroborates Mr. Gonzalez's testimony concerning his exposure to pipe being cut with a power saw, but he was unfamiliar with Mr. Gonzalez's exposure to asbestos under other circumstances. Ultimately, no other additional witnesses or other evidence establishing exposure to products of any of the 22 entities was ever adduced.

The exposure information originally submitted to each of the 22 trusts that ultimately did not pay Mr. Gonzalez's claim was consistent with the evidence adduced at discovery and at trial. In answers to interrogatories, Mr. Gonzalez stated exposure to joint compounds, panels, drywall, doors, fireproofing, pipe, asbestos fiber, and asbestos pipe, referencing specific suppliers of asbestos-containing insulation products (pipecovering, block, and cement), spray, plaster, and

joint compound. CertainTeed Motion Exhibits 1 and 4. He described sweeping the floor as part of cleaning up on the job. CertainTeed Motion Exhibit No. 11, Tr. p. 1348. In the bankruptcy trust claim forms he submitted to each of the 22 trusts, all of which are marked as exhibits by CertainTeed beginning with Exhibit No. 14, Mr. Gonzalez stated exposure to like products during the years 1975-78, when he worked for United States Construction Company as well as Martinez & Sons, although only Martinez & Sons is listed as the employer. None of these claims was paid, however, due to a lack of evidence, based upon the information submitted, that Mr. Gonzalez worked around the product of a bankrupt entity at any job site acknowledged by the Trust to which the claim was submitted as a job site where the bankrupt entity's products were used. These claims were withdrawn as of September 5, 2013. Fifth Supplemental Answers to Defendants' Joint Interrogatories filed September 9, 2013, Transaction ID No. 54078861.

Far from establishing the existence of evidence kept from CertainTeed, the submission of the claims and their ultimate disposition confirm that even under a standard of proof required by bankruptcy trust entities that is well below the standard of proof required to prove a claim in court, Mr. Gonzalez lacked the necessary proof of exposure to qualify for payment. This Court has previously ruled that statements in bankruptcy trust claim forms submitted as part of unpaid, withdrawn claims are inadmissible. See Opposition Exhibit No. 1.

The National Gypsum Trust claim, alone among the 23 claim forms submitted, was paid. After reviewing a job site list compiled from product identification information developed by the Law Offices of Peter G. Angelos, P.C., through multiple discovery sources, including depositions and company documents, Mr. Gonzalez identified sites from the list where he had worked, and these sites were presented to the National Gypsum Trust. The list, as checked off, was attached

to his affidavit that was submitted to the National Gypsum Trust. The affidavit, attached as CertainTeed Motion Exhibit 29, stated:

- “1. That I have worked as a laborer.
2. That as part of such work, I have been exposed to asbestos-containing materials and breathed air containing particles of dust arising from such materials from the years of 1975 to 1978.
3. That I have worked at the following locations, jobsite(s) and/or work areas where the asbestos-containing products manufactured, sold or distributed by National Gypsum were being used and/or installed: See, attached job site check-off list.
4. I certify the statements contained in this document are true and accurate to the best of my knowledge, information and belief.”

The National Gypsum Trust approved Mr. Gonzalez’s claim submission in accordance with the Trust’s claims review protocols.

CertainTeed is in no way prejudiced by the National Gypsum Trust settlement and payment. Consistent with this Court’s past rulings, CertainTeed will in all likelihood be able to use Mr. Gonzalez’s affidavit as an admission of exposure to National Gypsum asbestos-containing products at the trial. In the National Gypsum Trust Release, Opposition Exhibit No. 3, the release states that it is a full compromise of a disputed claim and is not an admission of liability by the Trust for Mr. Gonzalez’s injuries. As discussed at 14, *infra*, CertainTeed receives no offset, *pro rata* or *pro tanto*, from any verdict accounting for the National Gypsum Trust’s payment.

Mr. Martinez responded in deposition to whether he worked in any commercial buildings while working for United States Construction Company, “Commercial building, no. I don’t remember. No, I don’t work on commercial.” CertainTeed Motion Exhibit 2. A reasonable explanation for any variation between this testimony and his affidavit would be that Mr.

Gonzalez's memory of working commercial sites that was lacking at the deposition was later refreshed when he reviewed the job site list approved by National Gypsum. CertainTeed has taken a different path and argues that the only possible explanation is that Mr. Gonzalez lied at his deposition or lied in his affidavit, but that, in any event, Mr. Gonzalez was a lying liar.

This contention, that Mr. Gonzalez was a liar engaged in cunning litigation subterfuge, is made easier for CertainTeed by virtue of the fact that Mr. Gonzalez is now dead and cannot answer back. In an ironic twist, however, while seeking to muster further points supporting this contention that Mr. Gonzalez was engaged in systematic deception, CertainTeed engages in making systematically deceptive, demonstrably false statements, as bulleted below:

- "Mr. Gonzalez's responses to subquestions (h) through (k) [of the Fourth Supplemental Answers to Joint Interrogatories, No. 1, CertainTeed Motion Exhibit No. 42], concerning the types of asbestos-containing products, contractors and manufacturers that were present at [United States Construction Company], were not amended. Thus, notwithstanding his prior trial testimony to the contrary, Mr. Gonzalez still asserts that he was exposed to Kaiser Gypsum, U.S. Plywood, Asbestospray and Cafco products as set forth in his original answer. Curiously, National Gypsum remains absent from this list, even though Mr. Gonzalez certified that he was exposed to National Gypsum products at the above-referenced worksites in his claim upon the National Gypsum bankruptcy trust." CertainTeed Motion at 15-16.

This paragraph is completely untrue. As was the case with earlier Answers to Interrogatory No. 91, Parts (h) through (k) states the sum total of types of products and names of products to which Mr. Gonzalez was exposed when he worked for both employers referenced in the answer, United States Construction Company and Martinez & Sons. This was understood by

CertainTeed's counsel when he cross-examined Mr. Gonzalez at trial, at pp. 1351-56 of CertainTeed Motion Exhibit 11. National Gypsum is named as one such product in the Fourth Supplemental Answers, contrary to what CertainTeed claims. No mention is made of exposure to Kaiser Gypsum, U.S. Plywood, Asbestospray and Cafco products in the Fourth Supplemental Answers, contrary to what CertainTeed claims.

- “Mr. Gonzalez’s latest amended answer [in the Fourth Supplemental Answers] still maintains that he worked for Martinez between 1977 and 1979. See Exhibit 42. He now claims that, while working for Martinez, he was exposed to joint compounds and drywall in addition to asbestos containing pipe. *Id.* Moreover, Mr. Gonzalez’s [sic] states that these products were manufactured by ‘Bondex, Georgia Pacific, CertainTeed and **National Gypsum.**’ *Id.* (emphasis supplied).” CertainTeed Motion at 16.

This paragraph manages to be both completely untrue and directly contrary to the assertion made by CertainTeed in the previous paragraph that National Gypsum was not mentioned in the Fourth Supplemental Answers to Interrogatories. The reason for this paragraph’s falsity is the same as that for the previous paragraph quoted above: As was the case with earlier Answers to Interrogatory No. 91, Parts (h) through (k) states the sum total of types of products and names of products to which Mr. Gonzalez was exposed when he worked for both employers referenced in the answer, United States Construction Company and Martinez & Sons. This was understood by CertainTeed’s counsel when he cross-examined Mr. Gonzalez at trial, at pp. 1351-56 of CertainTeed Motion Exhibit 11.

- “When he was specifically questioned at his deposition by counsel for CertainTeed about his exposure to products manufactured by other companies, Mr. Gonzalez

flatly denied exposure to National Gypsum products.” CertainTeed Motion at 12 (emphasis added). This statement is false. When asked about the names of the joint compound products he testified to working with, he said, “The - that’s all I remember. It was - yeah, sometime gypsum. Gibson, or it was - and a Pacific. That’s all I can remember, because it’s been a long time.” (Emphasis added.) When asked whether he recalled the name National Gypsum or Gold Bond, Mr. Gonzalez stated, “I don’t remember.” CertainTeed Motion Ex. 2, p. 52. Inability to recall a manufacturer or product name is not a flat denial of exposure.

- “Significantly, discovery responses submitted by Celotex in asbestos cases prior to its bankruptcy show that Celotex’s insulation products contained amosite fiber.” CertainTeed Motion at 13. This clear attempt to imply that all insulation products made by Celotex to which Mr. Gonzalez may have been exposed contained amosite is false. Celotex’s Answers to Interrogatories attached as Exhibit 37 to CertainTeed’s Motion state in Answer No. 5, at p. 5, that Celotex’s products contained only chrysotile asbestos, with seven noted exceptions. CertainTeed fails to attach Exhibit A, Celotex’s Product list, referred to in the answer.

Plaintiffs have attached as Exhibit No. 4 to this Opposition the Product List Celotex routinely attached to its answers to interrogatories in the course of discovery in asbestos cases filed in Baltimore County and Baltimore City. The Product List shows that Celotex made a total of 61 asbestos-containing products. It also shows that, without exception, the seven products out of 61 that did not contain chrysotile exclusively went off the market after no later than 1973, before Mr. Gonzalez’s first exposure to asbestos occurred.

- “Similar to Celotex, discovery responses submitted by Eagle-Picher in asbestos cases prior to its bankruptcy show that Eagle-Picher’s insulation products contained amosite

fiber.” CertainTeed Motion at 14. This statement is indeed similar to that for Celotex, in that it is equally false in its clear attempt to imply that all insulation products made by Eagle-Picher to which Mr. Gonzalez may have been exposed contained amosite. Eagle-Picher’s Answers to Interrogatories attached as Exhibit 38 to CertainTeed’s Motion state in Answer No. 5, “The Company used only chrysotile asbestos in asbestos-containing products it formerly manufactured, except for D.E. Block, which contained chrysotile and amosite asbestos.” The Answer further states that D.E. Block was not made after 1953.

- “Similarly to Celotex, a submission by Keene to the federal government prior to its bankruptcy states that Keene’s insulation contained amosite fiber.” This statement is true, but deceptively leaves out the essential fact that renders false the underlying premise, *i.e.*, that Mr. Gonzalez may have been exposed to amosite-containing Keene products: Keene eliminated all asbestos from its products by 1972. CertainTeed Motion Exhibit No. 39, p. 2.

The Celotex, Eagle-Picher, and Keene Answers to Interrogatories showing that they ceased to make or sell asbestos-containing products before Mr. Gonzalez’s exposure began supply demonstrative examples why 22 of 23 Trust entities did not pay based on the information in the claim form to each of them that Mr. Gonzalez submitted. Mr. Gonzalez stated - truthfully - an exposure period to asbestos that post-dated when the Trust entities made and sold the products. As a result, he could not have been at an approved job site where he was exposed to such products. No supplemental information supplying such exposure information could be provided. Some of the claim forms were withdrawn; others were found by the Trust entity to be deficient, then were withdrawn. See Opposition Exhibit No. 2 and Exhibit A thereto, List of

Trusts' Disposition of claims submitted by Manuel Gonzalez as of August 29, 2013, and Fifth Supplemental Answers to Defendants' Joint Interrogatories filed September 9, 2013, Transaction ID No. 54078861.

These facts were known to CertainTeed before it filed its Motion for Sanctions. Plaintiffs provided the bankruptcy claim forms on December 12, 2012, the deadline by which they were required to do so by this group's Consolidation Order and Pre-trial Schedule. See Transaction ID No. 48391156, Letter of 12/12/12 from Stephen W. Smith to Counsel. In their Fourth Supplemental Answers to Defendants' Joint Interrogatories filed June 13, 2013, Plaintiffs updated bankruptcy claim form submission information in Answer to Interrogatory No. 36 and settlement information in Answer to Interrogatory No. 85. See CertainTeed Motion Exhibit 42. The information provided makes clear that the Manville Trust and National Gypsum claims had been paid, and that none of the other bankruptcy claim form submissions were paid. Despite this knowledge, CertainTeed has decided in the face of the obvious to nonetheless advance the contentions that the failure of Mr. Gonzalez's claim form information to establish exposure to asbestos-containing products should not limit CertainTeed's ability to treat such information as establishing such exposure, that the Trusts' denial of Mr. Gonzalez's claims should not limit CertainTeed's ability to treat such claims as accepted and paid, and that Mr. Gonzalez's timely, complete, and unevasive provision of bankruptcy claim form and settlement information is a part of conduct that is somehow deceptive, fraudulent, and an abuse of judicial process. This Court should reject these baseless contentions out of hand.

CERTAINTEED'S CITATION OF INAPPLICABLE LAW

CertainTeed has cited a number of cases for the proposition that the Court can impose the sanction of dismissal where there has been deception and fraud perpetrated upon a party and the Court, and where there has been an abuse of the judicial process. The findings of fact in each of the cases (some vacated), and their applicability to this case, is summarized in the table below:

MISCONDUCT	CASE	DID NOT HAPPEN IN THE GONZALEZ CASE
Alteration of memorandum, sending corporate employee to spy on a minority employee meeting, improper verification of interrogatory answers, witness harassment (findings vacated)	<i>Shepherd v. Am. Broad. Companies, Inc.</i> , 62 F.3d 1469 (D.C. Cir. 1995)	√
Illicitly obtaining and reading e-mails and documents to gain a litigation advantage (findings vacated)	<i>Weaver v. ZeniMax Media, Inc.</i> , 175 Md. App. 16, 923 A.2d 1032, <i>cert. denied</i> , 401 Md. 174, 931 A.2d 1097 (2007)	√
Minor seeking recovery, through next friend, for injuries from lead poisoning failed to attend court-ordered psychological examinations	<i>Wilson v. N.B.S., Inc.</i> , 130 Md. App. 430, 746 A.2d 966 (2000)	√
Wilful destruction of requested, discoverable evidence (surreptitiously taped telephone calls and contemporaneous memoranda concerning them)	<i>Klupt v. Krongard</i> , 126 Md. App. 179, 728 A.2d 727 (1999), <i>cert. denied</i> , 355 Md. 612, 735 A.2d 1107 (1999)	√

MISCONDUCT	CASE	DID NOT HAPPEN IN THE GONZALEZ CASE
Manufacture of bogus assignment agreements to establish holder of checks as a holder in due course (finding of reliance thereon by opposing party vacated)	<i>Triffin v. Automatic Data Processing, Inc.</i> , 926 A.2d 362 (N.J. App. Div. 2007)	√
Plaintiff admitted lying in answers to interrogatories and at deposition in regard to his past income (Dismissal of claims based on lost income granted)	<i>Smith v. Cessna Aircraft Co.</i> , 124 F.R.D. 103 (D.Md. 1989)	√
Plaintiff admitted forgery and perjury in applying for a patent at issue in the case	<i>Mas v. Coca-Cola Co.</i> , 163 F.2d 505 (4 th Cir. 1947)	√
Plaintiff admitted lying about his personal education and background	<i>O'Vahey v. Miller</i> , 644 So.2d 550 (Fla. Dist. Ct. App. 1994)	√
President of a firm named "Settlement Associates," which sells insurance and structured settlements to law firms and other companies, failed to disclose prior injuries occurring to the same parts of the body as to which injury was alleged	<i>Hull v. Municipality of San Juan</i> , 356 F.3d 98 (1 st Cir. 2004)	√
Plaintiff deliberately failed to disclose under oath visits to numerous health care professionals in addition to the 4 revealed.	<i>Martin v. DaimlerChrysler Corp.</i> , 251 F.3d 691 (8 th Cir. 2001)	√

MISCONDUCT	CASE	DID NOT HAPPEN IN THE GONZALEZ CASE
Plaintiff admitted lying about prior employment, omitting various jobs, denying contact and telephone communications with an employer and a co-worker at or about the time of their depositions, concealing his actions in doing so, lying about work history on job applications, and lying about prior drug treatment	<i>Gaskill v. Abex Corp.</i> , 2012 WL 6115717 (N.J. Supr. Ct. App. Div. 12/11/12)	√
Wilful and contumacious obstruction of discovery by failing to produce all sales records repeatedly requested, then disclosing during trial the existence of such records	<i>Abtrax Pharm., Inc. V. Elkins-Sinn, Inc.</i> , 655 A.2d 1368 (N.J. 1995)	√

The facts here do not warrant a finding of any inappropriate behavior, much less a finding by clear support of misconduct justifying the ultimate sanction of dismissal required under *Weaver*, 175 A.2d at 46, 923 A.2d at 1050.

CertainTeed also misstates the law in attempted support of its unfounded claim that filing bankruptcy claims after a trial allows Maryland plaintiffs to “stack” bankruptcy trust payments on top of any monetary damages awarded at trial. CertainTeed says at p. 26, n. 12, “A bankruptcy trust claim paid before the rendering of a damages award would most likely offset the damages award at trial pursuant to the Maryland Uniform Contribution Among Tort-Feasors Act,

Maryland Annotated Code (1974, 2006 Repl. Vol.) §§ 3-1401 to -1409 of the Courts & Judicial Proceedings Article.”

This is false. “Stacking” means, in the parlance of CertainTeed, that Plaintiffs can abuse the judicial system by waiting until after a trial to file claims and collect payment, thereby depriving a defendant of the ability to collect contribution in the form of either an offset or payment of money by the settling Trust that would have existed had the claim forms been submitted prior to trial. “Stacking” cannot occur under Maryland law. The Manville Trust and National Gypsum Trust settlements in this case offer perfect illustrations why.

The Manville Trust and two other Trusts (H.K. Porter and Celotex) are the only bankruptcy trusts that provide for an automatic *pro tanto* setoff, the form of which is as set forth in regard to the Manville Trust in *In re Joint E. & S. Dists. Asbestos Litig., Findley v. Falise*, 929 F.Supp. 1, 9 (E.D.N.Y. & S.D.N.Y. 1996). In this case, the Manville Trust settled before the trial and the Manville Trust release was provided to CertainTeed, so had there been a verdict against CertainTeed, the verdict would have been offset by the amount paid the Manville Trust. But even if Mr. Gonzalez had received a verdict against CertainTeed and waited to file a claim against the Manville Trust until after the trial, the end result would have been no different. Although CertainTeed would not have received an offset in the amount paid by the Manville Trust, it would have maintained contribution rights against the Manville Trust pursuant to the Manville Trust’s Trust Disposition Process, enabling CertainTeed to recover from the Trust once it paid the judgment what the Trust paid to Mr. Gonzalez. *See In re Joint E. & S. Dists. Asbestos Litig., Findley v. Falise*, 878 F.Supp. 473, 594-95 (E.D.N.Y. & S.D.N.Y. 1995) (Trust Disposition Process (h) 4. Contribution Claims).

The National Gypsum Trust does not provide for an automatic *pro tanto* setoff from a verdict. Instead, it receives a release stating that the release is a full compromise of a disputed claim and is not an admission of liability by the Trust for the claimant's injuries. Bankruptcy trusts are statutorily protected from suit by the Federal Bankruptcy Code and, consequently, the question of their status as joint tort-feasors is a matter that cannot be decided by a jury. *See Scapa Dryer Fabrics, Inc. v. Saville*, 418 Md. at 527-33, 16 A.3d at 177-81 (2011). *Scapa* holds, "... [D]enials of liability with no provisions for treatment of the Trust as a joint tort-feasor will result in no off-set for that particular Trust, just as analogous releases would be treated under the Joint Tort-feasors Act." *Id.*, 418 Md. at 533, 16 A.3d at 181. If Mr. Gonzalez had received a verdict against CertainTeed, CertainTeed would not have been entitled to an offset regardless of when Mr. Gonzalez filed a claim against the National Gypsum Trust, whether before or after the trial.

Mr. Gonzalez did nothing wrong and Plaintiffs' counsel did nothing wrong. The accusations made by CertainTeed in its Motion for Sanctions, while comfortably fitting into a meme popular with some in the Maryland asbestos defense bar that the Maryland asbestos plaintiffs' bar routinely abuses the bankruptcy claim form process, are without factual foundation just as the meme is without factual foundation. This Court should summarily deny this baseless motion.

For all of the reasons set forth above, Plaintiffs respectfully request that the Motion of Defendant CertainTeed Corporation for Sanctions be **DENIED**.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23rd day of September, 2013, a copy of the foregoing
was filed and served electronically, via LexisNexis File & Serve, to all counsel of record.

/s/ R. Bruce McElhone
R. Bruce McElhone

IN RE: PERSONAL INJURY
ASBESTOS LITIGATION

* IN THE
* CIRCUIT COURT

* FOR BALTIMORE CITY

LUTHER BEVERAGE, et al.,

* CONSOLIDATED NO. 24-X-11-000785

Plaintiffs

* OCTOBER 8, 2013
* MESOTHELIOMA TRIAL
* CLUSTER (M 134)

v.

ACandS, INC., et al.,

*

Defendants

*

CASE AFFECTED:

*

MANUEL GONZALEZ

* CASE NO. 24-X-08-000439

ORDER

The Motion of Defendant CertainTeed Corporation for Sanctions, the Opposition of
Plaintiffs to the Motion, and all supporting papers relating to the Motion and Opposition having
been read and considered, it is this ____ day of _____, 2013,

ORDERED:

That the Motion of Defendant CertainTeed Corporation for Sanctions be, and the same is,
hereby **DENIED**.

Judge, Circuit Court for Baltimore City

EXHIBIT NO. 1

Motions Hearing 6/3/2013
Vincent Auffarth v. ACandS, Inc.,

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IN RE: PERSONAL INJURY	*	IN THE
AND WRONGFUL DEATH		CIRCUIT COURT
ASBESTOS LITIGATION	*	FOR BALTIMORE
		CITY
	* * *	
VINCENT AUFFARTH, et al.,	*	CONSOLIDATED
Plaintiffs	*	NO. 24X11000781
v.	*	MAY 14, 2013
ACandS, INC., et al.,	*	TRIAL GROUP
Defendants	*	
	* * *	
CASE AFFECTED:	*	
VINCENT AUFFARTH	*	24X11000452
DON ROBERT HESSONG		24X08000336
		24X08000340
CARRIE TICHNELL	*	24X11000285
	* * *	

TRANSCRIPTION FROM DVD

MOTIONS HEARING

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Motions Hearing 6/3/2013
Vincent Auffarth v. ACandS, Inc.,

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<p>1 TRANSCRIPTION FROM DVD 2 MOTIONS HEARING 3 The Motions Hearing was held on Monday, 4 June 3rd, 2013, commencing at 9:36 a.m., 5 before the Honorable John M. Glynn and was 6 transcribed by Dawn M. Hyde, a notary public. 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21</p>	<p>1 APPEARANCES: (Cont'd) 2 On behalf of Defendants: 3 JOEL NEWPORT, ESQ. 4 Moore & Jackson 5 305 Washington Avenue 6 Suite 401 7 Towson, MD 21204 8 (410) 583 5241 9 newport@moorejackson.com 10 THURMAN ZOLLICOFFER, ESQ. 11 DANIELLE MARCUS, ESQ. 12 PETER SHEEHAN, ESQ. 13 Whiteford, Taylor & Preston 14 Seven Saint Paul Street 15 Baltimore, MD 21202 16 (410) 263 8205 17 psheehan@wtplaw.com 18 19 PHILIP KULINSKI, ESQ. 20 CLARE MAISANO, ESQ. 21 Evert, Weathersby and Houff SunTrust Bank Building 120 E. Baltimore Street, Suite 1300 Baltimore, MD 21202 (443) 573 8500 pikulinski@ewhlaw.com F. FORD LOKER, ESQ. Miles & Stockbridge 100 Light Street Baltimore, MD 21202 (410) 727 6464 flokier@milesstockbridge.com</p>
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<p>1 APPEARANCES: 2 On Behalf of Plaintiffs: 3 BRUCE McELHONN, ESQ. 4 EDWARD MONAGHAN, ESQ. 5 ARMAND VOLTE, ESQ. 6 JAMES ZAVAKOS, ESQ. 7 Law Offices of Peter G. Angelos 8 One Charles Center 9 100 North Charles Street 10 Baltimore, MD 21201 11 (410) 649 2000 12 emonaghan@lawpga.com 13 14 On Behalf of Defendants: 15 DAVID ALLEN, ESQ. 16 Goodell, DeVries, Leech and Dann 17 One South Street 18 20th Floor 19 Baltimore, MD 21202 20 (410) 783 4000 21 dwa@gddlalaw.com BRIAN ZEMIL, ESQ. THEODORE ROBERTS, ESQ. THOMASINA POROIT, ESQ. Venable 210 West Pennsylvania Avenue Towson, MD 21204 (410) 494 6255 buzemil@venable.com DONALD MERINGER, ESQ. Meringer, Zois & Quigg 320 North Charles Street Baltimore, MD 21201 (443) 524 7978 dmeringer@meringerlaw.com</p>	<p>1 APPEARANCES: (Cont'd) 2 On behalf of Defendants 3 THOMAS HANNA, ESQ. 4 Kelley, Jasons, McGowan, Spinelli & Hanna 5 Two Liberty Place 6 50 South 16th Street, Suite 1900 7 Philadelphia, PA 19102 8 (215) 854 0658 9 10 11 12 13 14 15 16 17 18 19 20 21</p>

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<p>1</p> <p>2 PROCEEDINGS</p> <p>3 * * * *</p> <p>4 9:36 a.m., Monday June 3rd, 2013.</p> <p>5 MOTIONS HEARING</p> <p>6 THE CLERK: All rise. Circuit Court</p> <p>7 for Baltimore City, Part 95 will start its</p> <p>8 morning session, the Honorable Judge Glynn</p> <p>9 presiding.</p> <p>10 THE COURT: Please be seated. Good</p> <p>11 morning.</p> <p>12 COUNSEL: Morning, Your Honor.</p> <p>13 THE COURT: So we don't have a</p> <p>14 reporter other than this machine. Am I right?</p> <p>15 MR. McELHIONE: Yes.</p> <p>16 THE COURT: Nobody cares? Okay.</p> <p>17 Here is the schedule. I am going to</p> <p>18 do all these motions as best I can. First,</p> <p>19 the May case, we can start trial on Wednesday.</p> <p>20 The June case, we can start trial on the 10th.</p> <p>21 And I anticipate in the June case, we will</p>	<p>1 rather large statements, relating to exposure</p> <p>2 of asbestos-containing products either</p> <p>3 directly or indirectly as occupational</p> <p>4 exposures for Mrs. Tichnell.</p> <p>5 THE COURT: Are these disputed? Are</p> <p>6 there any disputes about these?</p> <p>7 MR. ZEMIL: Yes. The plaintiffs</p> <p>8 have opposed our motion. We have pointed out</p> <p>9 that Your Honor has admitted these bankruptcy</p> <p>10 claim forms in the past in two different</p> <p>11 trials and that the arguments that are being</p> <p>12 advanced in the opposition, namely that they</p> <p>13 were offers of compromise of settlement, has</p> <p>14 been directly rejected by Your Honor in the</p> <p>15 Seville case specifically.</p> <p>16 And indeed other court -- the</p> <p>17 Volkswagen court that we cited similarly found</p> <p>18 predicate that Your Honor found for rejecting</p> <p>19 that argument, which namely is that the claim</p> <p>20 form is akin to a complaint. And the</p> <p>21 admissions contained in the complaint, just</p>
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<p>1 have to have another settlement</p> <p>2 conference/motions hearing on Thursday.</p> <p>3 So the June case is the case where</p> <p>4 the top plaintiff listed is Carl Adkins,</p> <p>5 Beverage, Adkins, Hartman and Schreiner. I'm</p> <p>6 assuming I am going to have to do all of the</p> <p>7 motions on Thursday because I don't know when</p> <p>8 else I can do them but Thursday. So that is</p> <p>9 the way it works. Deal with it. What have we</p> <p>10 got on motions?</p> <p>11 MR. ZEMIL: Your Honor, Brian Zemil</p> <p>12 on behalf of Wallace and Gale Asbestos</p> <p>13 Settlement Trust. There are several motions</p> <p>14 that are pending, Your Honor, that we would</p> <p>15 like to bring to your attention.</p> <p>16 THE COURT: What do you want to say?</p> <p>17 MR. ZEMIL: First, I want to say</p> <p>18 that I would like to get an order from Your</p> <p>19 Honor admitting the various bankruptcy claim</p> <p>20 forms that were submitted by the plaintiff to</p> <p>21 the various trusts that contained admissions,</p>	<p>1 like the admissions in the claim form, are</p> <p>2 appropriate for admission.</p> <p>3 Now, beyond that, Your Honor, which</p> <p>4 is an important finding because plaintiffs</p> <p>5 claim that if they are offers of compromise,</p> <p>6 they cannot be used for purposes of presenting</p> <p>7 them as inconsistent statements or for</p> <p>8 credibility purposes.</p> <p>9 Since the claim that they are offers</p> <p>10 of compromise we believe is not legitimate in</p> <p>11 the sense that it is not a basis to preclude</p> <p>12 them, obviously they are relevant on the</p> <p>13 grounds that credibility alone would be a</p> <p>14 means to admit the claim forms in the</p> <p>15 statements contained in them.</p> <p>16 More specifically, Your Honor,</p> <p>17 plaintiffs also oppose on the ground that the</p> <p>18 exposure statements aren't relevant under the</p> <p>19 Asner case because exposure in and of itself</p> <p>20 is not enough to permit the trust from</p> <p>21 presenting the evidence without something more</p>

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<p>1 in the form of a defense by establishing a 2 substantial plausible factor. 3 As Your Honor knows from presiding 4 over these various asbestos trials, expert 5 testimony will be given and we will have an 6 opportunity to examine these experts just like 7 we have done in discovery, as well as fact 8 witnesses. 9 And the jury will determine the 10 weight that they will give to respective 11 opinions of the experts and the facts of the 12 individual plaintiffs, and they can decide 13 ultimately, based on that information, whether 14 in fact the exposures occupationally that 15 Ms. Tichnell had as opposed to any potential 16 exposures as a carry-home from Mr. Tichnell 17 was a substantial causal factor and not one 18 that the plaintiffs claim Wallace and Gale is 19 responsible for. 20 Ultimately, Your Honor, we 21 believe -- and Your Honor has previously found</p>	<p>1 THE COURT: I haven't you guys caused 2 enough trouble with this issue? 3 MR. ZEMIL: Um -- 4 THE COURT: All of you. 5 MR. ZEMIL: If I heard Your Honor 6 correctly, haven't we had trouble -- 7 THE COURT: I haven't you guys in 8 general caused enough trouble over this issue 9 yet? 10 All right. What do you want to say? 11 MR. NEWPORT: Excuse me, Your Honor, 12 I apologize. Just Joel Newport on behalf of 13 Kaiser Gypsum in the Hessong case. We have a 14 similar motion pending for the same reason 15 that it's in that matter and I'll adopt the 16 arguments of Mr. Zemil. 17 THE COURT: So be it. 18 Yes? 19 MR. McELHONE: Morning, Your Honor, 20 Bruce McElhone on behalf of the plaintiffs. 21 Your Honor, I know that Your Honor has moved</p>
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<p>1 and we -- correctly so, based on other case 2 law that supports the reason that these 3 statements in the claim forms are admissions 4 against interest. They satisfy the hearsay 5 section, they're not barred -- 6 THE COURT: I don't know if they're 7 admissions against interest. They're 8 assertions of fact. 9 MR. ZEMIL: Well, they are. And 10 if -- you touched upon something, Your Honor, 11 because we cited the case, the Hood case, and 12 it's endorsed by Judge Murphy who says that 13 even if they were offers of compromise, these 14 statements of fact themselves can be lifted 15 and used for purposes of admissibility. 16 And so either way, no matter which 17 direction I think you ultimately go, they are 18 statements and they are admissions. 19 I'm referring to Your Honor's ruling 20 in Seville is that you found they were 21 admissions against interest.</p>	<p>1 to admit bankruptcy claim forms in cases past. 2 I was in a case a couple of years ago where 3 Your Honor did that. So I am well-aware of 4 the court's ruling and, as Your Honor knows, 5 that has not received strict appellate review 6 yet. So we are preserving our objections to 7 that. 8 THE COURT: That is fine. 9 MR. McELHONE: But that said, I 10 mean, Mr. Zemil in his motion said that these 11 claims are not submitted as part of the 12 settlement process, and in fact they are and 13 that is what the trust distribution process 14 has expressly said. 15 And our purpose really, since we 16 noted coming in, is to point out that since 17 Mr. Zemil put all these processes into his 18 motion and supporting exhibits, I posit to the 19 court that that shows, and correctly so, that 20 if the statements come in, the distribution 21 processes explaining the process should also</p>

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<p>1 come in based on the rule of completeness.</p> <p>2 Yes, these statements are submitted</p> <p>3 to support a settlement. Oftimes, those</p> <p>4 settlements are not consummated, and in this</p> <p>5 case, the Tichnell case, a number of these</p> <p>6 claims have been withdrawn. So to the extent</p> <p>7 that the claims have been withdrawn, that too</p> <p>8 should be part of the record based on</p> <p>9 completeness.</p> <p>10 So if Your Honor is going to admit</p> <p>11 it, I think it ought to be admitted in its</p> <p>12 proper context, but then getting to the</p> <p>13 purposes for which Wallace and Gale would want</p> <p>14 them admitted in the Tichnell case and why</p> <p>15 Kaiser would want to admit them in the Hessong</p> <p>16 case.</p> <p>17 One thing we're trying to prove is</p> <p>18 that Mrs. Tichnell, in the case of Wallace and</p> <p>19 Gale, and Mr. Hessong, in the case of Kaiser,</p> <p>20 were exposed to a lot of different products.</p> <p>21 Well, in and of itself, that is not</p>	<p>1 we will not do is that.</p> <p>2 THE COURT: Okay.</p> <p>3 MR. McELHONE: But the point is that</p> <p>4 they have to do more than just putting in</p> <p>5 evidence of other exposures. What they have</p> <p>6 to do is to have expert testimony that is</p> <p>7 going to explain why those other exposures so</p> <p>8 predominate over the exposures in the Tichnell</p> <p>9 case to Wallace and Gale products.</p> <p>10 Now, as Your Honor knows, Wallace</p> <p>11 and Gale was an insulation subcontractor.</p> <p>12 They used, among other things, pipe covering,</p> <p>13 cement and block that contained amosite</p> <p>14 asbestos as well as chrysotile.</p> <p>15 This is not a low-dose chrysotile</p> <p>16 defendant, like Garlock gaskets or a brake</p> <p>17 defendant.</p> <p>18 This is a defendant who just simply</p> <p>19 wants to put in evidence of other exposures</p> <p>20 without any supporting evidence from an expert</p> <p>21 to say that matters. And if it doesn't</p>
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<p>1 of relevance, and the Balbos[phonetic] case</p> <p>2 speaks to that expressly. The Asner case</p> <p>3 speaks to that expressly. And in Asner, it</p> <p>4 was specifically pointed out that the</p> <p>5 predomination idea is certainly --</p> <p>6 THE COURT: The predomination idea?</p> <p>7 MR. McELHONE: I'm sorry?</p> <p>8 THE COURT: What is the</p> <p>9 predomination idea?</p> <p>10 MR. McELHONE: The idea that the</p> <p>11 exposures to other parties' products are so</p> <p>12 predominant --</p> <p>13 THE COURT: So you have given up on</p> <p>14 the each and every exposure argument?</p> <p>15 MR. McELHONE: We are not putting in</p> <p>16 each and every exposure as a substantial</p> <p>17 contributing --</p> <p>18 THE COURT: You've given up on that</p> <p>19 harebrained argument.</p> <p>20 MR. McELHONE: Well, I'm not going</p> <p>21 to call it harebrained, Your Honor, but what</p>	<p>1 matter, it's not relevant. Wallace and Gale</p> <p>2 has not set forth or given to us the names of</p> <p>3 any medical expert that is going to be called</p> <p>4 at trial on this issue.</p> <p>5 So I don't see how they complete the</p> <p>6 nexus to connect the dots between the exposure</p> <p>7 to products of others to the significance of</p> <p>8 that insofar as the significance of the</p> <p>9 exposure by Mrs. Tichnell to Wallace and Gale</p> <p>10 products.</p> <p>11 THE COURT: Well, is the defendant</p> <p>12 arguing -- are you producing these to argue</p> <p>13 for -- as a third-party claim or a cross</p> <p>14 claim?</p> <p>15 MR. ZEMIL: No, Your Honor. We</p> <p>16 would present them to the extent that it's</p> <p>17 kind of establishing joint tortfeasor in a</p> <p>18 different setting though, Your Honor. Your</p> <p>19 Honor has taken this issue up with regard to</p> <p>20 whether or not the entities could be on the</p> <p>21 verdict sheet for purposes of joint</p>

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<p>1 tortfeasors status, and Your Honor has</p> <p>2 previously ruled in the Curry Taylor matter</p> <p>3 that the entities could not go on the verdict</p> <p>4 sheet.</p> <p>5 THE COURT: Because it depends on</p> <p>6 what you have proven.</p> <p>7 MR. ZEMIL: My understanding from</p> <p>8 reading the transcript was because of the</p> <p>9 bankruptcy stay, that's imposed, and that they</p> <p>10 couldn't go on the verdict sheet --</p> <p>11 THE COURT: For that reason too.</p> <p>12 They couldn't actually have a claim against</p> <p>13 them if they're still in bankruptcy.</p> <p>14 MR. ZEMIL: Correct.</p> <p>15 THE COURT: Unlike you guys, who</p> <p>16 brilliantly escaped.</p> <p>17 MR. ZEMIL: That may be the case,</p> <p>18 Your Honor, but we would be establishing</p> <p>19 expert-related testimony, Your Honor, through</p> <p>20 the very experts that they're putting on.</p> <p>21 I examined Dr. Kipen, I deposed him,</p>	<p>1 MR. ZEMIL: I'm sorry, the</p> <p>2 trust distribution procedures that we're</p> <p>3 referring to.</p> <p>4 THE COURT: Okay.</p> <p>5 MR. ZEMIL: These are voluminous</p> <p>6 documents, Your Honor. I mean, I have got --</p> <p>7 THE COURT: Right. So you object to</p> <p>8 their having an explanation for these claims.</p> <p>9 MR. ZEMIL: To the extent that they</p> <p>10 characterize it, yes, Your Honor. We would</p> <p>11 because they're statements of exposure. They</p> <p>12 don't need further explanation. These are</p> <p>13 admissions.</p> <p>14 THE COURT: I will elect how much of</p> <p>15 the explanation gets in up to where the trier</p> <p>16 who tries the case. But as a general matter</p> <p>17 they can offer background or explanation</p> <p>18 regarding how the process works. Whether they</p> <p>19 can actually have a witness that can do that</p> <p>20 is a different question. They need a witness</p> <p>21 who can do it. I don't know who they have.</p>
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<p>1 I asked him about whether or not early</p> <p>2 exposures carry more risk than later</p> <p>3 exposures, which in this case Mrs. Tichnell</p> <p>4 has already -- I mean, it's already</p> <p>5 established through the statements that she</p> <p>6 was exposed occupationally as early as 1946,</p> <p>7 both direct and indirect, and a significant</p> <p>8 exposure on a regular basis is what the</p> <p>9 statements say.</p> <p>10 So we believe that the testimony</p> <p>11 would certainly be available and we would</p> <p>12 present that for the jury to consider it.</p> <p>13 THE COURT: I am going to let the</p> <p>14 statement stand. That is clear enough. I</p> <p>15 don't see any problem with the plaintiffs</p> <p>16 offering whatever they have in the way of</p> <p>17 explanation for the statements of the process.</p> <p>18 What is the problem with that?</p> <p>19 MR. ZEMIL: Well, with regard to</p> <p>20 TDPs, we're only moving --</p> <p>21 THE COURT: TDPs?</p>	<p>1 All right. That is that away. What</p> <p>2 else have you got?</p> <p>3 MR. ZEMIL: Well, we were seeking a</p> <p>4 ruling, Your Honor, on another admissibility</p> <p>5 matter, namely there are two specific requests</p> <p>6 for admissions that directly relate to</p> <p>7 co-defendant Owens Illinois, and I believe</p> <p>8 that Owens Illinois has settled with the</p> <p>9 plaintiff and we would pursue a joint</p> <p>10 tortfeasor status with regard to them and</p> <p>11 present to the jury that on the verdict sheet</p> <p>12 ultimately.</p> <p>13 THE COURT: What are the facts?</p> <p>14 MR. ZEMIL: The facts. Well, the</p> <p>15 facts relate to specifically testimony that</p> <p>16 specific -- plaintiff-specific witness Mr.</p> <p>17 Christner gave with regard to the relevant</p> <p>18 years when Owens Illinois Kaylo is at issue in</p> <p>19 1956, 1957 and 1958.</p> <p>20 And both there's testimony that</p> <p>21 Mr. Tichnell specifically handled a bat or</p>

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<p>1 block insulation product and other testimony, 2 Mr. Christner claims that Wallace and Gale 3 came in during overhaul periods and applied 4 product -- asbestos-containing products. 5 THE COURT: What do you need? 6 MR. ZEMIL: Well, we specifically 7 asked for testimony -- I mean for admissions 8 relating to Mr. Tichnell's exposure to Kaylo, 9 Owens Illinois products. 10 And the response was if -- it's over 11 objection, if he was near an Owens Illinois 12 Kaylo product, then yes, fibers fell on 13 Mr. Tichnell's clothing for which he would 14 have taken home and his wife would have been 15 exposed. 16 But essentially they qualified it as 17 if he was near Owens Illinois Kaylo product. 18 THE COURT: What is the problem with 19 that? You have testimony. 20 MR. ZEMIL: Well, the day after that 21 response was filed, an e-mail was sent to the</p>	<p>1 testimony. The reference "other testimony" is 2 not attributed to a specific witness but is 3 represented by counsel to the expert that it 4 is in fact an exposure to Owens Illinois Kaylo 5 asbestos-containing products. 6 We asked the same question in our 7 RFA, in our request for admission, Your Honor. 8 We asked that, was he exposed. And they 9 qualified it if he was near -- if he was close 10 or in proximity to. 11 But the following day they tell the 12 expert that he was in fact exposed to the 13 product. 14 And the purpose of the RFAs is to 15 streamline the evidence. It wouldn't require 16 any subsequent testimony that would have to be 17 read to the jury if necessary and it would 18 establish that in fact Mr. Tichnell was 19 exposed during those respective years when 20 Owens Illinois made the Kaylo product and in 21 the e-mail to the expert they said for which</p>
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<p>1 plaintiffs' experts, Dr. Kipen, for example 2 and said that in fact there is testimony from 3 plaintiff-specific witness Mr. Christner and 4 another witness who is not identified that 5 establishes in fact that Mr. Tichnell was 6 exposed to Owens Illinois Kaylo in 1956 and 7 1957 and 1958. And that those fibers got on 8 his clothes. 9 THE COURT: What else do you need? 10 MR. ZEMIL: That is why the 11 admission is there, Your Honor. That is why 12 the admission asks that specific information 13 for them to admit just what they're saying in 14 the following day to their expert to us in our 15 papers. And they qualified that. They have 16 not admitted that same statement. They are in 17 essence inconsistent. 18 THE COURT: So there is no question, 19 though, there is exposure testimony. 20 MR. ZEMIL: There is no question 21 that there is plaintiff-specific exposure</p>	<p>1 Owens Illinois is responsible for 2 Mrs. Tichnell's mesothelioma. 3 So I can't reconcile the first 4 request for admission response with what is 5 represented to the expert on the following 6 day, and we believe that the rule provides 7 that you can strike that response and deem it 8 admitted, as they have done to their expert. 9 THE COURT: So you want an admission 10 that there was exposure or that it was a 11 cause? 12 MR. ZEMIL: No, that there was an 13 exposure. That Mr. Tichnell, Mrs. Tichnell's 14 husband, was exposed to Owens Illinois Kaylo 15 and that the asbestos fibers from that product 16 got on his clothes. 17 THE COURT: Does plaintiff deny 18 that? 19 MR. McELHONE: Well, here is the 20 problem, Your Honor. The request itself talks 21 about -- in fact it asks, Arthur Tichnell</p>

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<p>1 worked with asbestos cement at Kelly 2 Springfield which Carrie Tichnell was exposed 3 from his work clothes. What's the frequency? 4 What is the regularity? What is the 5 proximity? 6 We really don't know from their 7 request. If I admit that, just baldly admit 8 it, then Mr. Zemil gets to argue before the 9 jury he was exposed all the time, every day, 10 every time that Mr. Tichnell was working. 11 I am not going to do that. I think 12 that if the request for admission was made, it 13 has to be specific and address the products 14 and frequency, regularity and proximity. 15 I think my answer was good as far as 16 it goes and was made in good faith so that if 17 proven, that is what he could say. That is 18 all we admitted to. 19 THE COURT: All right. I think the 20 answer is clear enough. Denied. 21 What else?</p>	<p>1 underlying entities. 2 So, for example, there is a trust 3 set out for Combustion Engineering. But it's 4 not called Combustion Engineering, and so on 5 the face of the claim form in the statements 6 made when read to the jury, the jury will not 7 readily understand or recognize the 8 significance, the nature of the product and 9 the company associated with it. 10 So the RFAs were intended to round 11 out that description so that they jury would 12 have the benefit of knowing why that exposure 13 statement has relevance and who it's related 14 to. 15 And in so doing, Your Honor, 16 plaintiff responded with regard to two 17 different groups, different exposures. 18 Do you need to take a moment, Your 19 Honor? 20 THE COURT: No. 21 MR. ZEMIL: There is a first</p>
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<p>1 MR. ZEMIL: Your Honor, the next 2 motion I would bring up that relates to -- 3 back to the request for admissions and it 4 essentially seeks, Your Honor, that again with 5 regard to specific request for admissions 6 relating to the exposures that are made in the 7 bankruptcy claim forms, these claim forms in 8 and of themselves do have the exposures stated 9 which Your Honor has ruled on is admissible. 10 THE COURT: They say what they say. 11 MR. ZEMIL: They say what they say. 12 But what they fail to do is to fully explain 13 what the product or the company or the entity 14 specifically is because, as Mr. McElhone made 15 reference to, the trust distribution 16 procedures, the reorganization plans and all 17 these voluminous documents go on to explain 18 what the underlying entity was that the trust 19 is now established for. 20 So the trust propounded request for 21 admissions specifically relating to these</p>	<p>1 group -- 2 THE COURT: Thanks. 3 MR. ZEMIL: -- that relates to 4 bankruptcy claims that the plaintiff 5 represents they have withdrawn. They have 6 withdrawn them from the trust process and are 7 presently not seeking compensation from the 8 trust. 9 And because they're withdrawn, they 10 denied the request for admission seeking an 11 admission with regard to the exposure 12 relating -- occupational exposure relating to 13 the underlying entity. 14 THE COURT: So they withdrew these 15 claims. 16 MR. ZEMIL: That is right, Your 17 Honor. 18 THE COURT: So what am I supposed to 19 make of those? 20 MR. ZEMIL: Well, the way that the 21 trust views it, Your Honor, is that --</p>

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<p>1 THE COURT: Your trust.</p> <p>2 MR. ZEMIL: My trust. The way that</p> <p>3 we view it, Your Honor, is these claim forms</p> <p>4 are akin to complaints as Your Honor has</p> <p>5 pointed out and has been recognized in other</p> <p>6 courts.</p> <p>7 If a complaint is filed with the</p> <p>8 court and it's voluntarily dismissed, it</p> <p>9 doesn't negate the underlying statement made</p> <p>10 and admission made in that paper.</p> <p>11 Plaintiff may want it to disappear</p> <p>12 but they can't undo it, they can't put the</p> <p>13 rabbit back in the hat. I believe the only</p> <p>14 mechanism that that could possibly be done</p> <p>15 would have a motion for the court to actually</p> <p>16 strike the pleading and it would then</p> <p>17 therefore not exist.</p> <p>18 But the withdrawal of a complaint or</p> <p>19 a claim form doesn't negate the fact that the</p> <p>20 statement has been made and that the admission</p> <p>21 with regard to the occupational exposure</p>	<p>1 THE COURT: We have all known that</p> <p>2 for a long time. What's the point?</p> <p>3 MR. ZEMIL: Well, the point is that</p> <p>4 the admission exists. The withdrawal doesn't</p> <p>5 negate the admission. It doesn't eradicate</p> <p>6 it. It doesn't remove it. It doesn't just</p> <p>7 disappear. And as a result, Your Honor, we</p> <p>8 believe that plaintiff should be estopped from</p> <p>9 denying those exposures.</p> <p>10 THE COURT: But you don't know why</p> <p>11 they withdrew it.</p> <p>12 MR. ZEMIL: I do not.</p> <p>13 THE COURT: So what can you do with</p> <p>14 that? They withdrew it.</p> <p>15 MR. ZEMIL: It's not relevant to me</p> <p>16 what they have done subsequent to submitting</p> <p>17 it to the trust. What is relevant is that</p> <p>18 they made an admission about an occupational</p> <p>19 exposure that's significant and regular, both</p> <p>20 direct and indirect, for which they want to</p> <p>21 claim in this courtroom that her only</p>
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<p>1 exists.</p> <p>2 The fact this it's withdrawn</p> <p>3 ostensibly for reasons I do not know --</p> <p>4 THE COURT: Well, isn't that the</p> <p>5 guts of the matter, why was it withdrawn?</p> <p>6 MR. ZEMIL: I think that is an</p> <p>7 interesting point, Your Honor, but --</p> <p>8 THE COURT: Nobody has to say,</p> <p>9 though.</p> <p>10 MR. ZEMIL: Well, that is -- bear in</p> <p>11 mind -- I think the ultimate concern because</p> <p>12 if a jury was to draw an inference that it</p> <p>13 meant that she was not in fact exposed and</p> <p>14 that is why it's withdrawn, then the jury</p> <p>15 would also be entitled to develop an</p> <p>16 understanding that by withdrawing it, the</p> <p>17 trust, at least at this point in time, cannot</p> <p>18 prosecute its ability to get a setoff from any</p> <p>19 potential verdict.</p> <p>20 So that there could be a financial</p> <p>21 incentive associated with the withdrawal.</p>	<p>1 exposures are going to be carry-home from her</p> <p>2 husband.</p> <p>3 And so what matters is all those</p> <p>4 admissions. And whether withdrawn, deferred</p> <p>5 or otherwise thrown into the Chesapeake Bay,</p> <p>6 it doesn't change that fact, as much as they</p> <p>7 may want to.</p> <p>8 And therefore, the response that</p> <p>9 they deny is inconsistent and it creates an</p> <p>10 unfair advantage to the trust's detriment and</p> <p>11 that is why we're seeking the court to estop</p> <p>12 them from denying it and deem them admit it.</p> <p>13 THE COURT: I have a problem because</p> <p>14 you're not going to be able to make any sense</p> <p>15 out of this if you don't know why they</p> <p>16 withdrew it, but you don't know.</p> <p>17 MR. ZEMIL: Again, Your Honor, I</p> <p>18 don't know. However, that is not relevant to</p> <p>19 the admission itself. The withdrawal doesn't</p> <p>20 mean that this statement of admission</p> <p>21 disappears. If I filed a complaint and</p>

9 (Pages 30 to 33)

Motions Hearing 6/3/2013
Vincent Auffarth v. ACandS, Inc.,

Page 34	Page 36
<p>1 dismissed it, that doesn't mean that those 2 statements in that initial matter are gone. 3 And if a subsequent complaint is filed, those 4 prior statements made in that original 5 complaint would be admissions. 6 THE COURT: Are either of you going 7 to shed any light on this? 8 MR. McELHONE: Well, first of all, 9 this idea that there is no financial 10 incentive. The fact is if the release is a 11 conditional pro tanto release given by the 12 trust when it settles, there is no settlement. 13 Scapa decided that. That is done. 14 That's history. So I don't know what he is 15 talking about. In fact, for the first five 16 minutes I didn't know what he was talking 17 about because it wasn't the motion that I 18 read. Until I heard the word estoppel, that 19 is the concept as Wallace and Gale put it in 20 its motion. 21 The claim that "Plaintiff should be</p>	<p>1 interests of a client. We submitted claims. 2 We withdrew them because we did not think 3 there was a reasonable expectation that the 4 trust would pay them. So Mr. Zemil can get up 5 on his high horse and talk all he wants about 6 how he was estopped. 7 THE COURT: No horses are involved 8 in this case. 9 All right. I am not going to allow 10 the admission of withdrawn claims. So that is 11 the end of that. Denied. 12 What else? 13 MR. ROBERTS: Yes, Your Honor, Ted 14 Roberts for the Wallace and Gale Asbestos 15 Settlement Trust. We have a motion for a 16 transfer of venue forum non conveniens which 17 has been pending before Your Honor for some 18 time now. I don't intend to be arguing today 19 but -- 20 THE COURT: Didn't we argue it? 21 MR. ROBERTS: I apologize, Your</p>
Page 35	Page 37
<p>1 estopped from taking an inconsistent position 2 with earlier statements, in that estoppel is 3 appropriate where a party obtains advantage 4 from another party who is induced to provide 5 the advantage by altered conduct or 6 representations of the first party asserted 7 against equity in good conscience." 8 Those are Wallace and Gale's words. 9 So I don't know what the fraudulent inducement 10 was to Wallace and Gale that caused Wallace 11 and Gale to materially change its position to 12 its detriment. 13 I'd like Mr. Zemil, since he wrote 14 it, to get up and explain that. 15 Estoppel doesn't apply here. It has 16 no basis here and, you know, I'm sorry but, 17 you know, there are consequences to words. 18 Lawyers make words apply to the conduct of 19 other parties. 20 We're not guilty of nefarious 21 conduct here. We're representing the</p>	<p>1 Honor? 2 THE COURT: Didn't we argue it 3 already? 4 MR. ROBERTS: We did. We argued it 5 on March 8th and we're just in need of a 6 ruling on that. 7 THE COURT: I'm going to deny the 8 motion. The reasons I explained before. I 9 granted it in what I thought was the most 10 extreme and absurd case imaginable, the 11 Eastern Shore case. 12 I think it's quite likely the facts 13 on obeying the laws as now written in Maryland 14 will support the transfer, but it's also the 15 alternative argument that this is the process 16 we follow, it's sort of worked out for the 17 parties. It's a matter of sort of policy. 18 Just lose the case and appeal it and then 19 we'll find out. 20 MR. ROBERTS: Just respectfully, 21 Your Honor, I believe the court's position on</p>

10 (Pages 34 to 37)

EXHIBIT NO. 2

IN RE:	PERSONAL INJURY	*	IN THE
	ASBESTOS LITIGATION	*	CIRCUIT COURT
		*	FOR BALTIMORE CITY

LUTHER BEVERAGE, et al.,		*	CONSOLIDATED NO. 24-X-11-000785
	Plaintiffs	*	OCTOBER 8, 2013
		*	MESOTHELIOMA TRIAL
	v.	*	CLUSTER (M 134)
		*	
ACandS, INC., et al.,		*	
	Defendants	*	

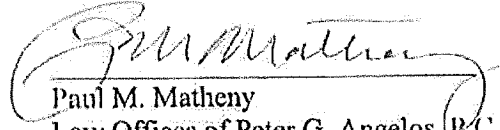
<u>CASE AFFECTED:</u>		*	
MANUEL GONZALEZ		*	CASE NO. 24-X-08-000439

AFFIDAVIT OF PAUL M. MATHENY

Paul M. Matheny, in due form of law, states as follows:

1. I am over 18 years of age and competent to testify and have personal knowledge about the matters and facts set forth herein.
2. I have been a lawyer with the Law Offices of Peter G. Angelos, P.C., since 1993.
3. I oversee the filing of bankruptcy trust claims. In the course of doing so, I am familiar with the protocols of the bankruptcy trust entities with which we file claims. The unit I oversee responsible for the filing of such claims maintains records indicating the disposition of such claims by the bankruptcy trust entities to which the claims are submitted.
3. Exhibit A to this Affidavit, a list of the disposition of each of Mr. Gonzalez's bankruptcy claims as to each of the Trusts to which he submitted claims, accurately reflects the disposition of each of those claims as of August 29, 2013.

I solemnly affirm on this 23rd day of September, 2013, under the penalties of perjury and upon personal knowledge, that the contents of the foregoing paper are true.



Paul M. Matheny
Law Offices of Peter G. Angelos, P.C.
One Charles Center
100 N. Charles Street, 22nd Floor
Baltimore, MD 21201-3804
(410) 649-2000

EXHIBIT A

Client: Manuel Gonzalez SSN: 577-92-3124 Date: 08/29/2013

Trusts	Comments
AC&S	Deferred- Exposure- No approved sites
ASARCO	Withdrawn
AWI	Deficient- Exposure- No approved sites
BW	Deficient- Exposure- No approved sites
CE	Deferred- Exposure- No approved sites
CX	Deficient- Exposure/ Products
EP	Withdrawn
FB	Deficient- Exposure- No approved sites
FLEX	Intake deficient- No exposure/ None approved
G-1	Incomplete-Exposure- No approved sites
HAL	Deficient- Exposure- No approved sites
HKP	Rejected
HW	Deficient- Exposure- No approved sites
JM	Paid
Kaiser	Withdrawn
Keene	Filed for LC? Deficient for exposure
NGC	Paid
OC	Deficient- Exposure- No approved sites
PB	Withdrawn
PH	Withdrawn
Raytech	Withdrawn
T&N	Intake deficient- No exposure/ None approved
USG	Deficient- Exposure- No approved sites
USM	No approved exposure site

EXHIBIT NO. 3

Claimant: Manuel Gonzalez Claim #: NG- 4029442 SSN: 577 - 92 - 3124

ADDENDUM TO

NGC BODILY INJURY TRUST

RELEASE AND INDEMNITY AGREEMENT

WHEREAS, the undersigned individual claimant, or representative of an individual claimant ("Claimant"), has filed a claim ("the Claim") with the NGC Bodily Injury Trust ("NGCBIT") pursuant to the Claims Resolution Procedures for the NGCBIT ("the CRP") approved by the United States District Court for the Northern District of Texas - Dallas Division In Re Asbestos Claims Management Corporation, Case No. 02-37124-SAF-11, and such Claim is an Asbestos Claim (as defined in the Third Amended Plan of Reorganization Under Chapter 11 of the United States Bankruptcy Code for Asbestos Claims Management Corporation (the "Plan") (all capitalized terms not defined herein shall have their respective meanings as defined in the Plan); and

WHEREAS, Claimant has agreed to settle and compromise Claimant's Asbestos Claim, for and in consideration of the allowance of the Asbestos Claim by the NGCBIT and its payment pursuant to the CRP;

NOW, THEREFORE, Claimant hereby further agrees as follows:

That the NGCBIT Release and Indemnity Agreement executed by Claimants is not intended to bar any cause of action, right, lien or claim which Claimants may have against any alleged tortfeasor, or any other person or entity, not specifically named in the NGCBIT Release and Indemnity Agreement or encompassed within the definition of the "Protected Parties" contained within the Third Amended Plan of Reorganization Under Chapter 11 of the United States Bankruptcy Code for Asbestos Claims Management Corporation, Article 1, Definitions and Interpretation, paragraph 1.1.143.

8/6/2010
Date

Esperanza B. Gonzalez
Signature
577-92-3137
Social Security Number, If not listed above

Claim: NG-4029442

Injured Party: Manuel Gonzalez

SSN: 577923124

**NGC Bodily Injury Trust
RELEASE AND INDEMNITY AGREEMENT**

WHEREAS, the undersigned, who is either the "Injured Party," or "Claimant Representative" of an Injured Party, Injured Party's estate or Injured Party's heirs (either being referred to herein as the "Claimant"), has filed a claim (the "Claim") with the NGC Bodily Injury Trust ("NGCBIT") pursuant to the Claims Resolution Procedures for the NGCBIT (the "CRP") approved by the United States District Court for the Northern District of Texas – Dallas Division In In Re Asbestos Claims Management Corporation, Case No. 02-37124-SAF-11, and such Claim is an Asbestos Claim (as defined in the Third Amended Plan of Reorganization Under Chapter 11 of the United States Bankruptcy Code for Asbestos Claims Management Corporation (the "Plan")) (all capitalized terms not defined herein shall have their respective meanings as defined in the Plan); and

WHEREAS, Claimant has agreed to settle and compromise the Injured Party's Asbestos Claim, for and in consideration of the allowance of the Asbestos Claim by the Trust and its payment pursuant to the CRP;

NOW, THEREFORE, Claimant hereby agrees as follows:

Claimant hereby fully and finally RELEASES, ACQUITS and FOREVER DISCHARGES the NGCBIT and the Protected Parties (including, but not limited to, ACMC, the NGC Settlement Trust, and New NGC) (collectively, the "Releasees"), from any Asbestos Claim asserted, now or in the future, by or on behalf of the Injured Party, the Injured Party's estate, the Injured Party's heirs and/or anyone else claiming rights through the Injured Party; provided, however, that if the Claim is for a non-malignant, asbestos-related condition, the Claimant shall retain the right to file, in accordance with the CRP only, a new asbestos bodily injury claim with the NGCBIT for a more serious non-malignant condition or an asbestos-related malignancy that is not diagnosed as of the date hereof.

Claimant expressly covenants and agrees forever to refrain from bringing any suit or proceeding at law or in equity, against any of the Releasees with respect to any Asbestos Claim released herein.

Claimant intends this Release and Indemnity Agreement to be as broad and comprehensive as possible so that the Releasees shall never be liable, directly or indirectly, to the Injured Party or the Injured Party's heirs, legal representatives, successors or assigns, or any other Entity claiming by, through, under or on behalf of the Injured Party, for or on account of any Asbestos Claim, whether the same is now known or unknown or may now be latent or may in the future appear to develop, except as expressly provided herein. If Claimant is a representative of an Injured Party who held an Asbestos Claim against any of the Releasees, Claimant represents and warrants that Claimant has all requisite legal authority to act for, bind and accept payment on behalf of the Injured Party and all other heirs of the Injured Party on account of any Asbestos Claim against the Releasees and hereby agrees to indemnify and hold harmless the Releasees from any loss, cost, damage or expense arising out of or in connection with the rightful claim of any other Entity to payments with respect to the Injured Party's Asbestos Claim against the Releasees.

This Release and Indemnity Agreement is not intended to bar any cause of action, right, lien or claim which Claimant may have against any alleged tortfeasor, or any other person or entity, not specifically named herein or encompassed within the definition of the "Protected Parties" contained within the Third Amended Plan of Reorganization Under Chapter 11 of the United States Bankruptcy Code for Asbestos Claims Management Corporation, Article 1, Definitions and Interpretation, paragraph 1.1.143. The Claimant hereby expressly reserves all his or her rights against such persons or entities. If Claimant is a Claimant Representative of a person who held an Asbestos Claim against any of the Releasees, this Release and Indemnity Agreement is not intended to release or discharge any Asbestos Claim or potential Asbestos Claim that the Claimant Representative or the Claimant Representative's heirs (other than the Injured Party, or those claiming through the Injured Party) may have as a result of the their own exposure to asbestos or asbestos-containing products.

1 Specifically, if the Asbestos Claim released herein is a Non-Malignant III claim, the Claimant retains the right to file a new claim with the NGCBIT, in accordance with the CRP only, for a Non-Malignant II or Non-Malignant I condition that is not diagnosed as of the date hereof. If the Asbestos Claim released herein is a Non-Malignant II claim, the Claimant retains the right to file a new claim with the NGCBIT, in accordance with the CRP only, for a Non-Malignant I condition that is not diagnosed as of the date hereof.



Claim: NG-4029442

Injured Party: Manuel Gonzalez

SSN: 577923124

Claimant further agrees to indemnify, defend and hold harmless the Releasees from any and all claims, demands, damages, debts, obligations, liabilities, liens or charges of any character by reason of any claims asserted by any Entity against the Releasees for indemnity, contribution or subrogation as a result of any claim, demand, cause of action, judgment or payment made by or to Claimant, or Claimant's heirs, legal representatives, successors or assigns, arising out of any Asbestos Claim released herein and any and all expenses (including, without limitation, reasonable fees and expenses of counsel for any of the Releasees) incurred by or on behalf of any of the Releasees in connection therewith.

It is further agreed and understood that if Claimant has filed a civil action against any of the Releasees for or on account of any Asbestos Claim released herein, the Claimant shall dismiss such civil action and obtain the entry of an Order of Dismissal with Prejudice of such Asbestos Claim against the Releasees.

The Claimant understands that the Claim has been allowed by the NGCBIT, and an Allowed Liquidated Value has been established for the Claim. The Claimant acknowledges that the NGCBIT will only be able to pay the Claimant a percentage (the NGC Bodily Injury Payment Percentage) of the Allowed Liquidated Value of the Claim. The Claimant further acknowledges that the NGC Bodily Injury Payment Percentage is based on estimates that change over time, and that other claimants may have in the past received, or may in the future receive, a smaller or larger percentage of the value of their claims than the Claimant. The Claimant further acknowledges that, other than as specifically set forth in the CRP, the fact that earlier or later claimants were paid, or may in the future be paid, a smaller or larger percentage of the value of their claims shall not entitle the Claimant to any additional compensation from the NGCBIT.

Claimant understands, represents and warrants this Release and Indemnity Agreement to be a full compromise of a disputed claim and not an admission of liability by, or on the part of, the Releasees. Neither this Release and Indemnity Agreement, the compromise and settlement evidenced hereby, nor any evidence relating thereto, will ever be admissible as evidence against the Releasees in any suit, claim or proceeding of any nature except to enforce this Release and Indemnity Agreement. However, this Release and Indemnity Agreement is and may be asserted by the Releasees as an absolute and final bar to any claim or proceeding now pending or hereafter brought by Claimant, except as expressly provided herein.

Claimant represents that he or she understands this Release and Indemnity Agreement constitutes a final and complete release of the Releasees with respect to the Injured Party's Asbestos Claim, except as expressly provided herein. Claimant has relied solely upon his or her own knowledge and information, and the advice of his or her attorneys, as to the nature, extent and duration of his or her injuries, damages, and legal rights, as well as the alleged liability of the Releasees and the legal consequences of this Release and Indemnity Agreement, and not on any statement or representation made by or on behalf of the Releasees.

This Release and Indemnity Agreement contains the entire agreement between the parties and supersedes all prior or contemporaneous, oral or written agreements or understandings relating to the subject matter hereof between or among any of the parties hereto.

This Release and Indemnity Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Texas, without giving effect to the principles of conflicts of law thereof and shall be binding on the Injured Party and his or her heirs, legal representatives, successors and assigns.

To the extent applicable, Claimant hereby waives all rights under Section 1542 of the California Civil Code, and any similar laws of any other state. California Civil Code Section 1542 states:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

Claimant understands and acknowledges that because of Claimant's waiver of Section 1542 of the California Civil Code, even if Claimant should eventually suffer additional damages, Claimant will not be able to make any claim for those damages, except as expressly provided herein. Claimant acknowledges that he or she intends these consequences.

Claim: NG-4029442

Injured Party: Manuel Gonzalez

SSN: 577923124

Payment Instructions:

The Trust is directed to deliver all payments with respect to the Claim payable as indicated below and to the address indicated below (Mark appropriate box and fill in any required information):

☐ Claimant:

☐ Claimant Representative:

☐ Others:

Claim: NG-4029442

Injured Party: Manuel Gonzalez

SSN: 577923124

By executing this Release and Indemnity Agreement below, in addition to agreeing to the terms set forth herein, I, the Claimant, hereby certify, under penalty of perjury, that:

- (1) I gave my attorney correct and accurate information about the Injured Party's exposure to asbestos-containing products;
- (2) I authorized my attorney to use that information to file a claim with the NGCBIT on my behalf;
- (3) The Injured Party was exposed to National Gypsum Company asbestos-containing product(s); and

(4) The Injured Party has been diagnosed as having Mesothelioma

EXECUTED under penalty of perjury this 6 day of 08, 2010

Signature of Claimant Espananza B. Gonzalez

Espananza B. Gonzalez
Printed Name of Claimant

Capacity of Claimant:

Injured Party Executor / Administrator / Trustee Guardian

Attorney-In-Fact (Power of Attorney) Other: _____

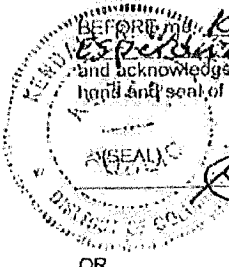
(One of the following two verifications must be completed. In addition, the Attorney Certification and Release appearing below must also be completed.)

NOTARY

STATE OF Washington

COUNTY OF DC

BEFORE ME, KENDALL R. WALKER, a notary public, on this day personally appeared Espananza B. Gonzalez known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he/she executed the same for the purpose and consideration therein expressed. Given under my hand and seal of office this 6 day of August, 2010.



[Signature]
Notary Public's Signature

KENDALL R. WALKER
District of Columbia
01/31/2012

OR
WITNESSES:

Signature: _____
Name: _____

Signature: _____
Name: _____

Claim: NG-4029442

Injured Party: Manuel Gonzalez

SSN: 577923124

AND

Law Firms may choose to execute the Attorney Certification and Release below or they may file the Annual Attorney Certification and Release Form (on the NGCBIT website, www.NGCBITrust.org, or provided by request), annually (calendar year), for all the Firm's NGC claims.

Annual Attorney Certification and Release on file.

OR

ATTORNEY CERTIFICATION AND RELEASE
[May be provided by separate letter or document]

I certify that the undersigned firm is attorney of record for Claimant. The legal effect of the Release and Indemnity Agreement was fully explained to Claimant by the firm, in person or in writing, prior to its execution. For adequate consideration, the sufficiency of which is hereby acknowledged, the undersigned firm releases any claims or other interests of the firm or its individual attorneys related to the matters released herein. I further certify, under penalty of perjury, as follows: I was authorized to file the Claim Form in support of this claim; I, or other trained personnel within my firm, reviewed the information submitted on such Claim Form and all documents submitted in support of this claim; and to the best of my knowledge, based on policies and procedures adopted and implemented by my firm concerning claims processing, the information submitted is true, accurate and complete, and/or the information is included within the claimant's file and is derived from information provided by the claimant, one or more of the claimant's co-workers or the claimant's medical experts.

Printed name of attorney: _____

Capacity: _____

EXHIBIT NO. 4

Exhibit B

ASBESTOS-CONTAINING INSULATION/INDUSTRIAL PRODUCTS
MANUFACTURED BY PHILIP CAREY AND/OR ITS SUCCESSORS*

Name, Trade Name and Description	Date of Manufacture	% Asbestos
I PIPE COVERINGS & BLOCK		
a) 85% Magnesia pbc	1906 to 1961	11-15%
b) Super Light 85% Magnesia pb	1951 to 1958	15%
c) Alltemp pb	1954 to 1958	10-12%
d) Careytemp pb	1958 to 1969 ('69-asb.removed)	6-7%
e) Paper Pipe Products:		
Aircel pb	1906 to 1960, 1969 to early 70's	60%
Careycel pb	1920's to 1960	60%
Carocel p	1925 to 1960	60%
Defendex p	WWII	60%
Excel pb	1925 to 1960	60%
Glosscell pb	1935 to 1960	60%
Multi-Ply pb	1930 to 1960	60%
Asbestos Sponge pb	1930 to 1960	60%
Fyrex p	1969 to early 70's	60+%
f) Other Pipe Coverings Manufactured:		
Tempcheck pbc	1952 to 1958	20%
Hi-temp #19 pbc	1906 to 1958	20%
Hi-temp #12 & #15 pbc	1906 to 1952	20%
Careytemp Alum. Jacketed & Traced Pipe Insul.	1961 to 1968	6-7%
Careytemp 2000 bc	1964 to 02/70	6.4%
Dual Careytemp p	1964 to 1967	10%
II ACCESSORY PRODUCTS TO INSULATION LINE		
a) Cements:		
707 Cement	1906 to 1960	43%
Super 606 Cement	1906 to 1960	10%
100 Cement	1906 to 1967	50%
303 Cement	1906 to 1967	55%
Careytemp Finishing Cement	1966 to 1968	22%
MW-40 Cement	1950 to 1952	10%
MW-50 Cement	1940 to 1967	10%
LF-20 Asbestos Cement	Unknown to 1967	60-70%
Vitricel Cement (#10 & #19)	1940 to 1967	15-25%
A-101 Cement	1906 to 1967	100%
7M-90 Asbestos Shorts Cement	1950 to 1977 (Brokered)	100%
Specialty Cements	Unknown to 1960's	Various %
b) Boards:		
Thermo-board	1925 to 1969	20%
4.2 Careystone Sheets	1925 to 1970	22%
Industrial A-C Boards	1925 to 1970	22%
Cemesto Board	1930's-early 1960's	Unknown
Careyflex Board	1925 to 1969	25%
Marine Panel	1941 to 1950	60%
Panel Board	1941 to 1950	60%
Careystone Sheathing & Baffles	1925 to 1969	22%
c) Miscellaneous Accessories:		
Fireguard	1950 to 1976	85%
Fireclad Jacketing	1965 to 1982	65%
45-pound Asbestos Waterproof Jacket	1906 to 1982	85%
Asbestos Rope & Wick	1925 to 1945	85%
III MISCELLANEOUS PRODUCTS		
Asbestos Papers & Roll Boards	1906 to 02/82	60-85%
Millboards	1906 to 02/82	65-97%
Asbesto-Sorb	1944 to 1950's	Unknown
Spraycraft	1969 to 1971	35%
Asbestos Felts	1960 to 1984	85%
Asbestos Tank Jackets	1906 to 1945	60%
Careyduct	1940 to 1955	60-85%
Thermalite	1906 to 1937	85%
Firefoil Board & Panel	1940 to 1960	60%
Vitricel Asbestos Sheets	1941 to 1960	60-70%
IV MATERIALS WHERE ASBESTOS IS FULLY ENCAPSULATED		
Thermotex-B	1906 to 1984	14%
228 Fibrated Emulsion	1906 to unknown	3.6%
Insulation Seal	1930 to 1984	20%
Fire Resistant Insul Seal	Unknown	20%
Fibrous Adhesive	1906 to 1984	15%
BTU Cement	1930 to 1965	25-30%
Carey Asphalt Floor Tiles	1930's to 1975	40%
Careytemp Adhesive	1961 to 1968	15%
Careyduct Adhesive	1940 to 1955	15%

* All product names are listed, even if quantities sold were small.
p = pipe covering b = block c = cement

File & ServeXpress Transaction Receipt

Transaction ID: 54266446
Submitted by: R McElhone, Angelos, Peter G PC-Baltimore
Authorized by: R Bruce McElhone, Angelos, Peter G PC-Baltimore
Authorize and file on: Sep 23 2013 11:59AM EDT
Court: Baltimore City Circuit Court
Division/Courtroom: Not applicable
Case Class: Civil
Case Type: Personal Injury-Asbestos
Case Number: 24X11000785
Case Name: Beverage, Luther et al vs A C and S Inc et al
Transaction Option: File and Serve
Billing Reference:
Read Status for e-service: Not Purchased

Documents List

3 Document(s)

Attached Document, 15 Pages Document ID: 57186334

Document Type:	Access:	Statutory Fee:	Linked:
Opposition	Public	\$0.00	<u>Yes</u>

Document title:
Opposition of Plaintiffs In Gonzalez to Motion of Defendant CertainTeed Corporation for Sanctions

Attached Document, 1 Pages Document ID: 57186344

Related Document ID: 57186334

Document Type:	Access:	Statutory Fee:	Linked:
Proposed Order	Public	\$0.00	

Document title:
Proposed Order Denying Motion of Defendant CertainTeed Corporation for Sanctions

Attached Document, 25 Pages Document ID: 57186352

Related Document ID: 57186334

Document Type:	Access:	Statutory Fee:	Linked:
Exhibits	Public	\$0.00	

Document title:
Exhibit Nos. 1 - 4 in Support of Opposition of Plaintiffs In Gonzalez to Motion of Defendant CertainTeed Corporation for Sanctions

[Expand All](#)

☒ [Sending Parties \(1\)](#)

Party	Party Type	Attorney	Firm	Attorney Type
Gonzalez, Manuel Jesus	Plaintiff	McElhone, R Bruce	Angelos, Peter G PC-Baltimore	Attorney In Charge

☒ [Recipients \(286\)](#)

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EXHIBIT 2

Hearing - 10/3/2013
Luther Beverage v. ACandS, INC.

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IN RE:	*	IN THE
PERSONAL INJURY	*	CIRCUIT COURT FOR
ASBESTOS LITIGATION	*	BALTIMORE CITY
* * * * *	*	* * * * *
LUTHER BEVERAGE, et al.	*	CONSOLIDATED CASE
Plaintiffs,	*	NUMBER: 24X11000785
vs.	*	
ACandS, Inc., et al.,	*	OCTOBER 8, 2013
Defendants	*	TRIAL GROUP
* * *	*	* * *
CASES AFFECTED	*	CASE NUMBER:
MANUEL GONZALEZ	*	24X08000439
FRANCIS C. PARSONS	*	24X11000502
* * * * *	*	* * * * *

HEARING

The Hearing, before the Honorable John
M. Glynn, taken in the above-captioned case on
October 3, 2013, commencing at 10:39 a.m., at
Courthouse Mitchell, 110 North Calvert Street,
Baltimore, Maryland, 21202, Room 406, and reported
by Monique Small Purvis, Court Reporter and Notary
Public.

EVANS REPORTING SERVICE
The Munsey Building, Suite 705
Seven North Calvert Street
Baltimore, Maryland 21202
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<p>1 APPEARANCES</p> <p>2</p> <p>3 ARMAND VOLTA, ESQUIRE</p> <p>4 BRUCE MCELHONE, ESQUIRE</p> <p>5 CHARLES CANDON, ESQUIRE</p> <p>6 ELIZABETH IGNATOWSKI, ESQUIRE</p> <p>7 Law Offices of Peter G. Angelos</p> <p>8 One Charles Center, 22nd Floor</p> <p>9 100 North Charles Street,</p> <p>10 Baltimore, Maryland 21201</p> <p>11 410-659-0100</p> <p>12 bmcclhone@lawpga.com</p> <p>13 On Behalf of the Plaintiffs</p> <p>14</p> <p>15 DOUG PFEIFFER, ESQUIRE</p> <p>16 LAURA CELLUCCI, ESQUIRE</p> <p>17 Miles & Stockbridge, P.C.</p> <p>18 100 Light Street</p> <p>19 Baltimore, Maryland 21202</p> <p>20 410-385-3867</p> <p>21 dpfeiffer@milesstockbridge.com</p> <p>leccucci@milesstockbridge.com</p> <p>on Behalf of the Defendant, CertainTeed</p>	<p>1 And as a further condition, CertainTeed</p> <p>2 agrees that we will withdraw our outstanding</p> <p>3 motion for sanctions in the Gonzalez case.</p> <p>4 THE COURT: Agreed counsel?</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10 Redacted</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18 THE COURT: Okay. We're done.</p> <p>19 (Whereupon, the proceedings concluded</p> <p>20 at 10:40 a.m.)</p> <p>21 ---</p>
Page 3	Page 5
<p>1 PROCEEDINGS:</p> <p>2 THE COURT: On the record.</p> <p>3 Counsel, whoever is going to speak,</p> <p>4 recite your appearances.</p> <p>5 MR. PFEIFFER: Doug Pfeiffer on behalf</p> <p>6 of CertainTeed.</p> <p>7 MS. CELLUCCI: Laura Cellucci on behalf</p> <p>8 of CertainTeed Corporation.</p> <p>9 MR. MCELHONE: Bruce McElhone on behalf</p> <p>10 of the plaintiffs along with Charlie Candon,</p> <p>11 Elizabeth Ignatowski and Armand Volta.</p> <p>12 THE COURT: How do you wish to proceed?</p> <p>13 MR. PFEIFFER: Judge, the parties have</p> <p>14 reached an agreement whereby CertainTeed agrees</p> <p>15 to pay in the two pending cases; Francis</p> <p>16 Parsons and Manuel Gonzalez, Redacted</p> <p>17 Redacted</p> <p>18 CertainTeed agrees that the Angelos</p> <p>19 office, on behalf of their respective clients,</p> <p>20</p> <p>21 REDACTED</p>	<p>1 State of Maryland</p> <p>2 County of Baltimore</p> <p>3 I, Monique Small Purvis, a Notary Public</p> <p>4 of the State of Maryland, County of Baltimore, do</p> <p>5 hereby certify that the above-captioned proceedings</p> <p>6 took place before at the time and place herein set</p> <p>7 out.</p> <p>8 I further certify that the proceedings</p> <p>9 were recorded stenographically by me, and that this</p> <p>10 transcript is a true record of the proceedings.</p> <p>11 I further certify that I am not of</p> <p>12 counsel to any of the parties, nor an employee of</p> <p>13 counsel, nor related to any of the parties, nor in</p> <p>14 any way interested in the outcome of the action.</p> <p>15 As witness my hand and seal this 13th</p> <p>16 day of October, 2013.</p> <p>17</p> <p>18 Monique Small Purvis</p> <p>19 My Commission Expires 04-28-16</p> <p>20</p> <p>21</p>

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